

Message

From: Kupchan, Simma [Kupchan.Simma@epa.gov]
Sent: 7/14/2020 5:13:43 PM
To: Wehling, Carrie [Wehling.Carrie@epa.gov]; Wade, Alexis [Wade.Alexis@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: RE: Options for "vehicle" to announce assumption ESA consultation decision
Attachments: Options for Decision on EPA Discretion to Consult under the ESA on State 404 Program Approvals sak.docx

Agreed that the comments sound interesting. I'll take a look.

Alexis, thanks very much for doing this. I just made one or two suggested edits for your consideration.



Options for
Decision on EPA ...

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From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Tuesday, July 14, 2020 1:12 PM
To: Wade, Alexis <Wade.Alexis@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: Options for "vehicle" to announce assumption ESA consultation decision

Very interesting re the comments. We'll have to spend some time considering those since a legal challenge seems very likely.

I agree that the "how" to inform folks of the decision does not raise a significant legal issue – these options look right to me.

Thanks for the update, Alexis.

Carrie

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From: Wade, Alexis <Wade.Alexis@epa.gov>
Sent: Tuesday, July 14, 2020 12:18 PM
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Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>

Subject: Options for "vehicle" to announce assumption ESA consultation decision

Hello – Mindy asked us to draft some options for how the program would make the decision on the consultation question for program approvals. I put together a quick set of options. The “how” doesn’t seem to be a big legal question, so the program may have more considerations to list than I’ve thought of here. Let me know if you think differently or if you have any suggestions. I spoke to Simma yesterday about possibly mentioning this issue to David today at the NHPA meeting since Dave is likely to want to hear from everyone on this question tomorrow at the 3:00 check in.

Kathy is preparing a summary of the comments received on the FRN and will discuss them tomorrow at the 3:00. I haven’t finished reviewing the comments yet. But, the ones I’ve skimmed are interesting. Defenders of Wildlife commented that EPA does have discretion and should consult on the program approval but any ITS would not cover each project, so the projects should also get Section 10 permits. PLF and Nat’l Assoc. of Home Builders argued that EPA does not have discretion to consult, but should consult on oversight of individual permits by certain federalizing permits (they call this the off-ramp approach). There are 22 total comments. << File: Options for Decision on EPA Discretion to Consult under the ESA on State 404 Program Approvals.docx >>

Thanks,
Alexis

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